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10-8149

✓ *Personnel - 11*

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Study of Placement of Retired Senior Military Officers in CIA

I. Terms of Reference

The constant flow of applications to the Agency from officers of flag rank in the Military Services seeking employment presents problems of major consideration to the DCI. Public Law 53, 82nd Congress, limits the employment of officers retired for reasons other than service-connected or combat-incurred physical disability to 15. Proposed legislation in 1956 sought to increase this figure to 35. The impact of the existing and the proposed legislation reduces by that number the senior-grade staff employee positions which would otherwise be available to civilian officers under the CIA Career Service program. In the best interest of the Agency and the intelligence community, we must determine the types of employment and areas of employment in which the services of retired senior military officers can best be utilized.

A. Authority

1. Public Law 53, 82nd Congress, approved June 26, 1951, provided an Amendment to the Central Intelligence Agency Act of 1949 by the addition of a sub-section "(f)," which granted the Agency authority to employ and to pay the compensation of not more than fifteen officers or warrant officers of the Armed Services while performing services for the Agency.

a. The Act enabled retired officers or warrant officers to hold positions within the Agency without regard to the 1894 statute which prohibits an officer from holding two Federal offices.

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b. Removed the prohibition of the dual-compensation statutes and authorized an officer, retired for reasons other than physical disability, to receive only the compensation of his position with the Agency or his retired pay, whichever he may elect.

2. Justification in support of this legislation was presented to the Chairman, Committee on Armed Services, House of Representatives, in a letter from the Director, CIA, on 20 February 1951, and stated:

"There are a few key positions in the Central Intelligence Agency which can be filled most effectively--indeed, can only be filled effectively--by selected officers of the Armed Services. Although I have a quota of personnel from each of these Services, I am unable to obtain, for these few key positions, officers of the training and experience which I require, as this training and experience is usually acquired only by rather senior officers whose numbers on the active list are limited. The obvious solution is to employ professionally and physically qualified retired officers, but the so-called dual-compensation statutes make it impossible for me to obtain the services of any of those who are released for reasons other than for physical disability and physical disability would, in most cases, be a disqualifying defect from the CIA point of view. Thus, the Government is precluded from utilizing in a very important field the services of certain highly qualified individuals in whose training the United States has a very considerable investment and who are capable of performing highly important functions of particular concern to this Agency by reason of such training.

I am faced with an immediate need for the services of certain peculiarly well qualified retired officers, as well as some who

are just reaching the retirement age. Their assistance, particularly in these times, will constitute a contribution of the greatest importance to our work, not only in certain operations and technical fields but also in estimates of foreign military potentials...."

B. Clark Task Force Recommendations

1. At the conclusion of its investigation of CIA activities in 1954, the Clark Task Force recommended that Public Law 53, 82nd Congress be amended by deleting the words "not more than fifteen" contained in the Act, and substituting the word, "any," thus permitting CIA under the law to employ an unlimited number of retired officers and warrant officers. This recommendation was made under the considerations that in the event of war, CIA civilian losses to the Military Services either by personal choice or by direction, would compel the Agency to meet these losses by maximum utilization of retired personnel. It was the opinion of the Task Force that retired officers who possess the required competence should be brought into the Agency in peacetime in order to gain experience and to lessen the effect of major manpower losses of key civilian employees in time of war.

2. Based on the Clark Force recommendation, legislative counsel drafted a bill which was presented and referred to the Committee on Armed Services on April 19, 1956. This bill amended Public Law 53 by striking out "fifteen" and inserting in lieu thereof, "thirty-five." According to legal counsel the item no longer appears on the Agency's legislative calendar.

3. The figure "thirty-five" was approved by the CIA Career Council after repeated attempts to extract a firm requirement from the

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Deputy Directors had met with no success. Informal conferences with members of the Armed Services Committee disclosed that they would take a dim view on any appreciable increase. "Thirty-five" was considered reasonable by the Career Council and satisfied the Clark Task Force recommendation. There was no compelling justification submitted in support of this legislation.

C. Discussion

1. It will be recalled that Public Law 53 was sought and approved during the Korean conflict, and at the time of CIA's greatest expansion. Competent and experienced officers possessing specialized skills in the logistics, communications, paramilitary, and specialized intelligence fields were in short supply among Agency civilian personnel and military officers on duty with the Agency, who had retired for reasons of physical disability. The addition of fifteen retired senior officers helped to alleviate this shortage.

2. As a result of the Agency's greatly expanded formal training program, and the maturing of its career employees, CIA is in a better position today to fill its key senior positions with experienced and competent personnel from internal sources. At the same time, the Armed Services constitute a powerful segment of the intelligence community and the Agency will continue to benefit by the inclusion in its top echelon of employees, a certain number of competent, senior retired officers not obtainable except under the provisions of Public Law 53.

3. The conditions upon which the Clark Task Force based its recommendation has been mitigated to a large extent by recent action

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of the CIA Career Council. This action approved the establishment of a CIA standby reserve. It authorizes the Director of Personnel to prepare and maintain a directory of selected former employees, based on recommendations of the Deputy Directors, whose services would be required and whose response to an invitation to return in an emergency could be assured. It is anticipated that between [] persons will be listed in this directory exclusive of the CIA Unit of the National Defense Executive Reserve and the CIA Civilian Specialist Reserve.

4. CIA is not the only Government Agency which offers the prospective employee lawful exemption from the dual compensation laws that affect all retired officers of the Armed Services, who retire for reasons other than combat incurred or service-connected disability. The Panama Canal Company, Canal Zone Government, Post Office Department, Weather Bureau, Department of Agriculture, Census Bureau, Federal Civil Defense Administration, District of Columbia Government and International Boundary and Water Commission (Department of State) each have obtained similar legislation in an attempt to chip away at the onerous effect various portions of the dual compensation statutes have upon their particular Agency.

D. Statistics

1. As of 30 June 1958, [] regular, retired military officers were employed by the Agency in a civilian status in grades GS-8 to GS-18. (Attachment A) This study is concerned primarily with senior officers whose retirement was based on longevity; who were recruited under Public Law 53; and who occupy grades GS-15 to GS-18, inclusive.

2. From the date of its enactment in 1951, to date, []

[] senior, retired officers have accepted positions with the agency

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3. It is helpful to keep this compensation feature in mind and in proper perspective in discussing employment alternatives, and reasons why the retired senior officer is hesitant to accept employment as a consultant or contract employee.

F. Consultants and Contract Personnel

1. a. Agency Regulations ☐ identifies a consultant as an individual with unusual special skills, knowledge or experience who is hired to serve the Agency in an advisory capacity. This individual cannot engage in supervisory or administrative duties, except as they may pertain to the performance of his advisory function.

b. The rate of compensation is established in an amount commensurate to their duties and qualifications.

2. Agency Regulations ☐ identify three categories of contract personnel. Each category is designed to fill special needs of the Agency.

a. Contract Employees - Further classified as staff type and non-staff type depending on extent of security clearance and whether or not individual has access to Headquarters installations. This category of personnel are employed to meet the short-range needs of the Agency. Paid on a fee basis.

b. Contract Agents - Reserved for utilization in proprietary or subsidized projects and not allowed to work at Headquarters or base installations. Paid on a fee basis.

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Compensation and benefits are comparable to this afforded Staff employees.

3. A check of Agency records shows only [] out of a total of [] intermittent consultants are retired military officers of senior grade. Retired military officers of senior grade, employed under contract status numbers less than [] The exact figures are not readily available.

4. The main features that make the offer of employment as a consultant unattractive to a physically qualified, retired senior military officer include:

- a. Intermittent employment not to exceed one calendar year duration at any one time;
- b. Contract renewal on a year-to-year basis only;
- c. Non-eligibility to coverage under the Civil Service Retirement Act or benefits from participation in the Federal Employee Life Insurance Program;
- d. Under current policies, compensation limited to \$50 a day.

5. In addition, acceptance of employment as a consultant without the protection of P.L. 53 automatically subjects the retired officer to the provisions of the dual compensation statutes which limit total Federal compensation to \$10,000 a year, including retired pay.

6. The retired pay of the lowest flag-rank officer exceeds \$10,000 a year. Theoretically, the acceptance of any additional compensation from Federal appropriated funds would be unlawful. An adverse ruling on the part of the Comptroller General as to the legality of payment and acceptance of compensation greater than that authorized by law is always a possibility and could result in financial embarrassment.

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8. It is extremely doubtful that a senior, retired military officer between the ages of 55 and 60, with no physical disability, and with a minimum of thirty years public service to his credit, could afford to accept employment as a consultant or contract agent unless he possessed an independent income or was offered employment on a fee basis.

9. The Comptroller General has ruled, however, at 26 Comp. Gen. 501 that a retired officer on a fee basis who acts in an advisory capacity as to problems and questions presented by administrative officers rather than to perform the duties imposed by law or to be under the control of administrative officials is not to be regarded as occupying a civilian "office or position" as used in section 59a. The Comptroller General also ruled with respect to section 62 that the engaging of a retired officer as a consultant, by contract or otherwise, upon a fee basis, for services actually performed, is not an appointment to an "office to which compensation is attached" within the meaning of those words as used in the said section 62. Although the wording of this ruling would appear to open up broad areas of possible solution to some of the varied needs of the Agency, such has not been the Agency's experience.

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a. The opinion of the Comptroller General was solicited by the Agency for the utilization of [redacted] Retired, and [redacted] Retired, as intermittent consultants on the OGE panel. Comptroller General decision B-105707 addressed to [redacted] Accountable Officer, Director, Special Payments Division, Bureau of Supplies and Accounts, Navy Department, Cleveland 14, Ohio, was issued regarding [redacted] Although the opinion was accepted as controlling with regard to [redacted]'s status the Admiral was informed for our benefit that any other Naval personnel that might be utilized in similar intermittent capacity would have to be the subject of individual rulings, that the ruling with regard to [redacted] could not be accepted as applying to any other than his individual case.

b. With regard to the ruling concerning [redacted] even though no question was raised by the Army, the General Accounting Office became somewhat concerned about their issuance of the opinion after it was issued, and informally advised this office that were the same situation to be presented again for determination by the Comptroller General that they probably would not follow their previous issuance. They did not feel that our true fact situation here in the Agency was such as to bring officers retired for longevity within the intermittent consultant exclusion.

10. The foregoing concept of consultants paid on a fee basis has been specifically extended by the Comptroller General, in unpublished decision [redacted] dated July 7, 1955, to include cases where the fairest method of computing the fee involved is upon an annual basis and that such fee is regarded as being equivalent of a retainer fee paid an attorney in

private practice. The ruling granted in this case is so close to the borderline in that retired officers employed by the Government on a time basis are held to be subject to the double compensation statutes, that, here also, were the occasion to arise wherein the Comptroller General would be called up to review this decision he might well reverse himself.

11. a. Public Law 53 is an indisputable point of law. The Comptroller's decisions are an interpretation of the provisions of the law. General Counsel considers it legal to offer employment to a senior retired military officer on a retainer-fee basis, either as a consultant or contract employee with minimum risk of embarrassment. The Director has full protection under the Security Act of 1947 which authorizes him to establish rates of pay. The military retired officer is afforded 90% protection against the dual compensation statutes.



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c. It is obvious that all senior staff and operations positions in the Agency are basically organizational positions and require full-time employment of the individuals assigned. Consultants and contract employees, normally, are employees who accept intermittent employment. The Comptroller General makes great distinction between continuous and intermittent employment of senior retired officers in Federal positions which might come into conflict with the dual compensation laws. Currently, there is no assignment held by any senior retired military officer whether retired for longevity or combat-and-service-incurred disability that does

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not require the full-time service of the individual concerned. Furthermore, none of these jobs lend themselves to reclassification as consultative- or contractual-type positions with the possible exception of Area or Technical Specialists on the Staffs of GME, T38 and OSI.

d. It is important to note that none of the present incumbents would willingly accept the same assignment on a consultant or contractual basis. The fact that only senior military retirees have accepted consultant positions with the Agency is indicative of the unattractiveness of this type of employment when it is public knowledge that P.L. 53 offers more advantages and greater financial protection.

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12. From the foregoing it is seen that technically the import of the double compensation statutes is on the individual retired officer. The many ramifications of the two statutes cited, as well as others that have less direct bearing has resulted in many occasions where retired officers have drawn dual pay in all good faith, then later have had to reimburse thousands of dollars to the Government. This problem is most critical in this Agency where there have been created many unusual situations that would not necessarily be recognizable to the retired individual or his private counsel that bring the individual in conflict with the dual employment statutes. It is incumbent upon the Agency, therefore, to continue to scrutinize each case of utilization of retired military officers in order to assist the individual in his personal determination to accept or reject a given offer by the Agency, as well as to assist Area Divisions and other personnel in determining whether to attempt recruitment of a retired individual in a given case.

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13. a. It is conceivable that the dual compensation laws will eventually be repealed (the Retired Officers Association supported by the Army-Navy-Air Force Journal actively lobby for this eventuality). Public Law 53 would then lose its validity and you would have no legal shield to withstand a torrent of applications.

b. The consequences are obvious. You would be faced with more rather than fewer unpleasant decisions, and would be seeking the very protection P.L. 53 now affords, which restricts employment opportunities to fifteen.

14. Repeal of the dual compensation laws, no doubt, will nullify to some extent the limitations on employment imposed by P.L. 53. A totally new concept of employment can be envisioned wherein the retired military officer would be offered one type of employment only--that of a contract employee on a fee basis.

15. It is essential that Legal Counsel keep abreast of new legislation affecting the dual compensation laws. When it is once determined what effect such legislation will have on P.L. 53, the Deputy Director of Support will be in a position to coordinate a study and recommend to you appropriate areas of employment and an equitable and lawful scale of retainer fees, based on position and seniority.

F. Conclusions

1. The basic premise upon which P.L. 53 was initiated is less valid today than in 1951. CIA can live within the present provisions of P.L. 53 without danger to its prestige and without undermining its effectiveness.

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2. The percentage of senior retired officers authorized under P.L. 53 and occupying GS-15 or super-grade positions is acceptable and is not harmful to the CIA Career Service program.

3. Employment under the provisions of P.L. 53 is the safest and most attractive offer the Agency can make to the senior military officer who has retired for reasons of longevity.

4. The next best is the offer of employment to senior retired officers as consultants or contract agents on a fee basis.

5. The application of the dual compensation statutes to all regular officers, retired for reasons of longevity, make it unremunerative and, therefore, unattractive to accept employment with the Agency as an intermittent consultant or contract employee.

6. Greater flexibility can be achieved by not establishing the areas of employment or distribution of this category of personnel within CIA at this time.

9. Recommendations

1. That no legislation be initiated at this time to amend the provisions of P.L. 53.

2. That senior officers of exceptional ability, who have retired for reasons of longevity and who are acceptable for employment with CIA, be entered on duty to fill one of the 15 P.L. slots, or, be offered contract employment on a fee basis to avoid conflict with dual compensation prohibitions.

3. That the option of continued employment under the provisions of Public Law 53 be predicated upon:

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- a. Satisfactory service.
- b. Termination at your discretion or completion of five years service with six months advance notice of termination or extension.

/s/ ~~Lyman B. Kirkpatrick~~

Lyman B. Kirkpatrick
Inspector General

Attachments A,B,C, and D

cc: DDCI
Deputy Director of Support
✓ General Counsel

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